

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON, AT SEATTLE

* * * * *

BOARD OF TRUSTEES OF THE
EMPLOYEE PAINTERS' TRUST; BOARD
OF TRUSTEES OF THE RESILIENT FLOOR
COVERING PENSION FUND; BOARD OF
TRUSTEES OF THE DISTRICT COUNCIL
NO. 5 APPRENTICESHIP AND TRAINING
TRUST FUND; BOARD OF TRUSTEES OF
THE FINISHING TRADES INSTITUTE;
PAINTERS AND ALLIED TRADES LABOR-
MANAGEMENT COOPERATION
INITIATIVE; WESTERN WASHINGTON
FLOOR COVERING INDUSTRY FUND;
INTERNATIONAL UNION OF PAINTERS
AND ALLIED TRADES DISTRICT
COUNCIL NO. 5,

Plaintiffs,

vs.

D CIULLA FLOORING LLC, a dissolved
Washington limited liability company;
DOMINIC JOHN CIULLA dba D CIULLA
FLOORING; DOMINIC JOHN CIULLA, an
individual; DOES & ROES I-X,

Defendants.

CASE NO.:

COMPLAINT

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COMPLAINT

The Plaintiffs, the Board of Trustees of the Employee Painters' Trust, Board of Trustees of the Resilient Floor Covering Pension Fund, Board of Trustees of the District Council No. 5 Apprenticeship and Training Trust Fund, Board of Trustees of the Finishing Trades Institute, Painters and Allied Trades Labor-Management Cooperation Initiative, Western Washington Floor Covering Industry Fund, and International Union of Painters and Allied Trades District Council No. 5 (collectively "Plaintiffs"), by and through their counsel, Christensen James & Martin and The Urban Law Firm, complain and allege as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction of this case pursuant to Section 502(e)(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1132(e)(1), which grants the United States District Courts exclusive jurisdiction over civil actions brought by a fiduciary pursuant to Section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), to redress violations or enforce the terms of ERISA or an employee benefit plan governed by ERISA. Such jurisdiction exists without respect to the amount in controversy or the citizenship of the parties, as provided in Section 502(f) of ERISA, 29 U.S.C. § 1132(f).

2. This court has jurisdiction of this case pursuant to Section 301(a) of the Labor Management Relations Act of 1947, as amended ("LMRA"), 29 U.S.C. § 185(a), which grants the United States District Courts original jurisdiction over suits for violation of contracts between an employer and labor organization in an industry affecting commerce, without respect to the amount in controversy or the citizenship of the parties.

3. Venue is proper in this Court pursuant to Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2), and Section 301(a) of the LMRA, 29 U.S.C. § 185(a), in that this is the Judicial District in which the Trusts are administered, the signatory labor organization maintains its office, where the relevant acts took place, and where the contractual obligation is to be paid.

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1 4. To the extent this Complaint sets forth any state law claims, this Court has
2 supplemental jurisdiction over those claims pursuant to 28 U.S.C. § 1367(a).

3 PARTIES AND GENERAL ALLEGATIONS

4 5. The Employee Painters' Trust, Resilient Floor Covering Pension Fund, District
5 Council No. 5 Apprenticeship and Training Trust Fund, and Finishing Trades Institute
6 (collectively "Trusts"), are express trusts created pursuant to written declarations of trust ("Trust
7 Agreements") between various unions, including the International Union of Painters and Allied
8 Trades District Council No. 5 and its associated Locals ("Union"), and various employer
9 associations.

10 6. The Trusts exist to provide employee benefits to participants under a
11 "multiemployer plan," "employee benefit plan," "employee benefit pension plan," and/or
12 "employee welfare benefit plan," as the case may be, within the meaning of ERISA, 29 U.S.C.
13 §1002(37), (2) and (3).

14 7. The Board of Trustees and the individual Trustees of each of the Trusts is a
15 "named fiduciary," "plan administrator" and "plan sponsor" and each is an individual
16 "fiduciary," within the meaning of 29 U.S.C. §§1102(a), 1002(16), & (21), with respect to
17 collection of contributions due to the Trusts and related matters.

18 8. The Trusts were created and now exist pursuant to Section 302(c) of the LMRA,
19 29 U.S.C. § 186(c), and are administered in Seattle, Washington.

20 9. At all times material herein, the Union has been a labor organization representing
21 employees in the construction industry in Western Washington and surrounding areas. The
22 Union represents employees in an industry affecting commerce within the meaning of Section
23 301(a) of the LMRA, 29 U.S.C. § 185(a).

24 10. The Painters and Allied Trades Labor-Management Cooperation Initiative
25 ("LMCI") and Western Washington Floorcovering Industry Fund ("FIF") are each an

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1 unincorporated association or fund to which the Defendants named herein are required to make
2 monetary contributions pursuant to the terms of the labor agreement, as described below.

3 11. Defendant D Ciulla Flooring, LLC (“DCF LLC”) was and/or is a Washington
4 limited liability company identified by Washington UBI Number 603 298 867. Its business
5 status with the Washington State Secretary of State’s records is currently listed as
6 “Administratively Dissolved” as of September 2, 2014.

7 12. Defendant DCF LLC was and/or is a contractor operating in the State of
8 Washington under Washington State Department of Labor & Industries License No.
9 DCIULCF878NB (“DCF LLC License”). The Washington State Department of Labor &
10 Industries’ records state that the DCF LLC License has been relicensed as of August 2, 2015,
11 and state, “Contractor relicensed under another name, structure, or specialty.”

12 13. Defendant Dominic John Ciulla (“Ciulla”) was and/or is an individual residing in
13 the State of Washington and is listed under the DCF LLC License as a partner/member of DCF
14 LLC.

15 14. Defendant Dominic John Ciulla d/b/a D Ciulla Flooring (“DCF DBA”) was
16 and/or is a Washington sole proprietorship of Defendant Ciulla, and a contractor operating in
17 the State of Washington under Washington State Department of Labor & Industries License No.
18 DCIULCF8500P (“DCF DBA License”).

19 15. Defendant Ciulla is listed under the DCF DBA License as the sole owner of DCF
20 DBA.

21 16. Defendants DCF LLC and DCF DBA have been operated as a single enterprise,
22 with common ownership, common management, interrelationship of operations, and centralized
23 control of labor, and are working as a single entity, enterprise, employer and business in fact.
24 Defendants DCF LLC and DCF DBA may be collectively referred to hereinafter as “DCF.”
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1 17. Defendant Ciulla is the primary manager, officer, director, owner, principal
2 and/or key employee of DCF, whose employment duties required decision making regarding the
3 operations of DCF, procurement and negotiation of contracts, hiring/firing of work force,
4 directing labor relations, project management, keeping corporate records and company books,
5 managing financial affairs, payment of expenses and accounts payable, tracking employee
6 hours, preparing and processing payroll and remitting reports, contributions and payments to the
7 Trust Fund for each hour of covered labor performed.

8 18. At all times material herein, Defendants DCF LLC, DCF DBA and Ciulla,
9 individually and jointly, are the owner, co-owner, agent, partner, representative, employee
10 and/or alter-ego of each other, or otherwise acting on behalf of each other, and in doing the
11 things herein alleged, were acting within the course and scope of said ownership, agency,
12 partnership or relation, with the permission and consent of each of them, and that each was
13 working as a single entity, employer and business in fact.

14 19. At all times material herein, DCF has operated as a flooring installation
15 contractor in the State of Washington.

16 20. On or around December 3, 2018, Ciulla, as agent of DCF, executed that certain
17 Washington Floor Covering Master Labor Agreement between DCF and the Union ("CBA"),
18 wherein DCF agreed to be bound to the terms and provisions of the CBA and each of the Trust
19 Agreements utilized to create the Trusts.

20 21. The Plaintiffs are intended third-party beneficiaries of the CBA.

21 22. At all times material herein, DCF has been obligated by the terms of the CBA
22 and Trust Agreements to submit written reports to the Plaintiffs on a timely basis showing the
23 identities of employees performing work covered by the CBA and the number of hours worked
24 by or paid to these employees.

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1 23. At all times material herein, DCF has been obligated by the terms of the CBA
2 and Trust Agreements to properly pay to the Plaintiffs fringe benefit contributions, benefits,
3 dues, and/or withholdings for health, welfare, pension, retirement, vacation, training, and other
4 employee benefits on a monthly basis and at specified rates for each hour worked by or paid to
5 the employees for covered labor performed.

6 24. At all times material herein, DCF's monthly reports and payment of
7 contributions are due by the fifteenth (15th) day of the month following the month in which the
8 covered labor was performed. Signatory employers are required to submit monthly remittance
9 reports to the Plaintiffs whether or not any covered work was performed during the work month
10 to be reported.

11 25. Contributions to the Trust Funds and LMCI are required to be remitted by the
12 employer in addition to wages, while vacation fund contributions, market recovery fund
13 contributions and dues are required to be deducted from wages and remitted by the employer.

14 26. Employer contributions are considered fund assets from the date they are due
15 pursuant to the written terms of the Trust Agreements, whether or not they are actually paid, and
16 must be held in trust by an employer until remitted to the Plaintiffs. Contributions that are
17 deducted from wages, including vacation, market recovery, and union dues, are to be held in
18 constructive trust by an employer. Both employer contributions and wage deductions are
19 components of the employees' compensation and do not belong to the employer. Employers
20 have a fiduciary duty to ensure that both employer contributions and wage deductions are
21 properly and timely delivered to the Plaintiffs.

22 27. As a result of the report and contribution obligations imposed therein, the
23 Plaintiffs are intended beneficiaries of the CBA.

24 28. DCF is an "employer" as that term is understood and defined in the CBA and
25 DCF is an "employer" as that term is used in Section 3(5) of ERISA, 29 U.S.C. § 1002(5), and

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1 therefore, DCF is “obligated to make contributions to a multiemployer plan” within the meaning
2 of Section 515 of ERISA, 29 U.S.C. § 1145.

3 29. DCF is an “employer” engaged in “commerce” in an “industry affecting
4 commerce,” as those terms are defined and used in Sections 501(1) and 501(3) of the LMRA,
5 29 U.S.C. § 142(1) and (3), and within the meaning and use of Section 301(a) of the LMRA,
6 209 U.S.C. § 185(a).

7 30. Based on information and belief, DCF employees, including but not limited to
8 Andrew Ramirez, Jeremy J. Smith, Joseph C. Michaud, and Alan Wood, performed floor
9 covering labor covered by the CBA on one or more projects beginning in December 2018.

10 31. DCF has not reported or paid contributions to the Trusts for any covered labor
11 performed by its employees.

12 32. Based on information and belief, DCF failed to pay all wages owed to its
13 employees.

14 33. Based on information and belief, DCF made deductions from its employees’
15 wages for certain Union dues, market recovery and vacation fund fringe benefit contributions,
16 but failed to submit payment of these amounts deducted to the Plaintiffs.

17 34. The Plaintiffs are entitled to receive payments from DCF for all covered labor
18 performed by DCF employees, measured by the hours worked by such employees and the
19 contributions that should have been paid had DCF abided by the terms of the CBA and Trust
20 Agreements.

21 35. Plaintiffs have made numerous written demands to DCF for submission of the
22 missing reports and contributions related to the covered labor performed by DCF’s employees.

23 36. DCF has failed to submit any reports or contributions to the Plaintiffs.
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37. Based on information and documents from DCF's employees, DCF owes the Plaintiffs \$7,921.90 in contributions, \$1,117.46 in liquidated damages and \$425.35 in interest, subject to the Plaintiffs' audit of DCF's records.

38. The CBA and Trust Agreements expressly give the Trusts the right to review employer records to verify the employer's compliance with the report and payment obligations under the CBA and Trust Agreements.

39. The Plaintiffs are entitled to audit DCF's payroll and related records to determine the amounts owed by DCF and discover any other delinquencies that may be owed to the Plaintiffs. The Plaintiffs are entitled to recover fees and costs of the audit pursuant to the express terms of the CBA and Trust Agreements.

40. Pursuant to the express terms of the Trust Agreements, corporate officers are also personally liable for contributions and related damages owed to the Trust Funds:

In recognition that individuals have responsibilities in a corporation which is a participating Employer in a Trust, and that contributions are for the welfare of covered employees, the responsible individuals in a corporation which is a participating Employer shall be individually liable for payment of contributions and other charges owing under this Article VI 11. Therefore, in the event any corporate Participating Employer which is obligated to make contributions to the Trust fails to make such contributions, the President, the Treasurer, and any other corporate officer who is responsible for payment of contributions by the corporation to the Trust fund shall be each individually liable for the payment of contributions and any other amount due under this Article VIII, and under applicable Federal law, 29 U.S.C. Section 1132(g).

41. Each of the Defendants are in some manner responsible for the actions, acts and omissions herein alleged and the damages caused to the Plaintiffs, and are therefore jointly and severally liable for the damages set forth herein.

42. The true names and capacities, whether partnership, individual, corporate, company, associate or otherwise of John Does I-X, inclusive, and Roe Corporations I-X, inclusive, are unknown to the Plaintiffs at this time and are therefore sued by fictitious names.

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1 The Plaintiffs reserve the right to amend the Complaint to insert additional charging allegations,
2 together with the true identities and capacities, when the same have been ascertained.

3 FIRST CAUSE OF ACTION

4 [Breach of Written Labor Agreement and Related Trust Agreements – DCF]

5 43. The Plaintiffs herein restate and reallege the above allegations as if fully set forth
6 verbatim.

7 44. By the terms of the CBA and Trust Agreements, DCF was required to remit
8 reports and fringe benefit contributions, benefits, dues and/or withholdings to the Plaintiffs for
9 each hour of covered labor performed by its employees.

10 45. DCF is contractually delinquent by failing to properly report covered labor, to
11 remit Reports and to pay fringe benefit contributions, benefits, dues and/or withholdings to the
12 Plaintiffs or other contract damages when due.

13 46. DCF breached the CBA and related Trust Agreements by failing to timely and
14 properly submit reports and/or fringe benefit contributions, benefits, dues and/or withholdings
15 to the Plaintiffs and/or by failing to pay contract damages as described herein.

16 47. DCF breached the CBA and Trust Agreements by failing to make its records
17 available for a payroll compliance audit.

18 48. Pursuant to the CBA and Trust Agreements, DCF agreed that in the event of any
19 delinquency, DCF would pay, in addition to the delinquent Contributions: (i) interest thereon at
20 the rates established by the Plaintiffs, or at the legal rate, whichever is greater; (ii) liquidated
21 damages thereon in an amount set by the CBA, Trust Agreements or as otherwise provided by
22 law; and (iii) all legal and auditing costs in connection therewith, whether incurred before or
23 after litigation is commenced.

24 49. It has been necessary for the Plaintiffs to engage the law firms of Christensen
25 James & Martin and The Urban Law Firm to enforce the contractual obligations owed to the

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1 Plaintiffs and collect any and all amounts due.

2 50. Pursuant to the CBA and Trust Agreements, DCF owes the Plaintiffs
3 contributions, benefits, dues and/or withholdings calculated or measured by all hours of covered
4 labor performed by its employees, plus interest at the contractual rate on all unpaid
5 contributions from the dates the sums were originally due to the Plaintiffs to the date of
6 judgment, liquidated damages, reasonable attorney's fees, court costs, and auditing costs
7 incurred by the Plaintiffs as a result of the breaches described herein.

8 51. Under 29 U.S.C. 1132(g)(2), the Plaintiffs are entitled to collect double the
9 interest in lieu of the liquidated damages total if higher.

10 52. Upon entry of judgment, the Plaintiffs are entitled to post-judgment interest at
11 the highest rate allowed by law. The amount of such interest will be established by proof at trial.

12 SECOND CAUSE OF ACTION

13 [Violation of ERISA - 29 U.S.C. § 1145 – DCF]

14 53. The Plaintiffs herein restate and reallege the above allegations as if fully set forth
15 verbatim.

16 54. By failing to report and pay contributions to the Plaintiffs in accordance with the
17 CBA and Trust Agreements, DCF has violated ERISA [29 U.S.C. § 1145]. In accordance with the
18 terms of the CBA and Trust Agreements, and pursuant to Section 502(g)(2) and 515 of ERISA
19 [29 U.S.C. §§ 1132(g)(2) and 1145], the Plaintiffs are entitled to payment of all contributions
20 determined to be due, as well as liquidated damages, interest, audit costs, attorneys' fees, costs
21 incurred in enforcing the terms of the CBA and Trust Agreements, and such other legal and
22 equitable relief as the Court deems appropriate.

23 55. The contract breaches and violations of ERISA identified above harm the
24 Plaintiffs and place at risk the Plaintiffs' ability to provide required employee benefits to their
25 beneficiaries.

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1 56. The Plaintiffs' remedies at law are not sufficient to adequately compensate the
2 Plaintiffs or their beneficiaries from past harm caused by said violations, or to protect them
3 from the harm or threat of harm caused by similar future violations.

4 57. The Plaintiffs are likely to prevail on the merits of their claims.

5 58. The Plaintiffs are entitled to injunctive relief pursuant to 29 U.S.C. § 1132(a)(3)
6 and other applicable law affirmatively compelling DCF to make its records available to the
7 Plaintiffs for inspection and audit to verify compliance with its obligations under the CBA and
8 Trust Agreements.

9 59. The Plaintiffs are entitled to injunctive relief pursuant to 29 U.S.C. § 1132(a)(3)
10 and other applicable law affirmatively compelling DCF to submit all monthly remittance reports
11 and pay all contribution amounts and related damages to the Plaintiffs in compliance with their
12 obligations under the CBA and Trust Agreements.

13 60. The Plaintiffs are entitled to all remedies provided by ERISA as and for
14 compensation for the Defendants' violations.

15 THIRD CAUSE OF ACTION

16 [Breach of Written Trust Agreements – Dominic John Ciulla]

17 61. The Plaintiffs herein restate and reallege the above allegations as if fully set forth
18 verbatim.

19 62. The CBA incorporates the terms of the Trust Agreements governing the Trusts.

20 63. The Trust Agreements for Plaintiffs Employee Painters' Trust and District
21 Council No. 5 Apprenticeship and Training Trust Fund each contain an express provision
22 imposing personal liability for unpaid contributions and related damages on the President,
23 Treasurer, or other corporate officer of the employer responsible for payment of contributions
24 for an employer required to make such contributions.

25 64. At all times material herein, Defendant Dominic John Ciulla, as DCF's corporate

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1 officer responsible for making payment of contributions to the Plaintiffs and DCF's agent who
2 signed the CBA binding DCF to the CBA, became personally and individually bound and liable
3 to the Employee Painters' Trust and District Council No. 5 Apprenticeship and Training Trust
4 Fund, pursuant to the express terms of the Trust Agreements governing those Trust Funds, for
5 the contributions and related damages owed to those Trust Funds by DCF.

6 THIRD CAUSE OF ACTION

7 [Breach of Fiduciary Duty – Dominic John Ciulla]

8 65. The Plaintiffs herein restate and reallege the above allegations.

9 66. Ciulla and one or more of the Doe or Roe Defendants were responsible for
10 tracking employee hours, preparing and processing payroll and remittance reports and making
11 contributions and payments to the Plaintiffs for each hour of covered labor performed.

12 67. Contributions that are deducted from wages are to be held in constructive trust by
13 an employer. Wage deductions are components of the employees' compensation and do not
14 belong to the employer. Employers have a fiduciary duty to ensure that wage deductions are
15 properly and timely delivered to the Plaintiffs.

16 68. Ciulla and one or more of the Doe or Roe Defendants made determinations as to
17 how funds deducted from employee wages were to be handled, segregated, distributed and/or
18 paid, including whether the deductions would be properly turned over to the Plaintiffs.

19 69. Ciulla and one or more of the Doe or Roe Defendants exercised authority and
20 control relating to the management or disposition of the deductions from wages.

21 70. Ciulla and one or more of the Doe or Roe Defendants is each a fiduciary
22 responsible for safe handling of the wage deductions and delivery to the Plaintiffs.

23 71. The actions of Ciulla and one or more of the Doe or Roe Defendants in failing to
24 make transmit the wage deductions to the Plaintiffs materially harmed the employees and
25 Plaintiffs, placed the beneficiaries of the Plaintiffs at risk with regard to their benefits and

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1 constitute a breach of each individual's fiduciary duties to the Plaintiffs and their beneficiaries.

2 72. The Plaintiffs are entitled to recover from Ciulla and one or more of the Doe or
3 Roe Defendants a sum equal to all wage deductions, plus accrued interest, liquidated damages,
4 audit costs, attorneys' fees, and costs of suit, in an amount to be established by proof at trial.

5 PRAYER FOR RELIEF

6 WHEREFORE, the Plaintiffs pray for Judgment against Defendants, and each of them,
7 as follows:

8 1. For the Court's Order compelling DCF to deliver or make available to the
9 Plaintiffs all information and documents necessary to permit the Plaintiffs' auditors to perform
10 payroll compliance audits deemed necessary and property by the Plaintiffs;

11 2. For the Court's Order enjoining DCF from failing to fully cooperate with any
12 audits deemed necessary and proper by the Plaintiffs, and from failing to timely pay to the
13 Plaintiffs delinquent amounts discovered by the audits or as otherwise incurred in the normal
14 course of business;

15 3. For the Court's Order compelling DCF to deliver to the Plaintiffs monthly
16 remittance reports detailing all covered work performed;

17 4. For the Court's Order affirmatively compelling DCF to abide by the terms of the
18 CBA, including, but not limited to, submitting and paying accurate monthly contribution
19 remittance reports and contribution amounts to the Plaintiffs on a timely basis;

20 5. For the Court's Order enjoining DCF from failing to timely pay the Plaintiffs
21 future contribution amounts, as they become due;

22 6. For unpaid fringe benefit contributions in the amount of \$7,921.90, subject to
23 audit, or in amounts to be proven at trial;

24 7. For damages for breach of contract and violation of ERISA in an amount to be
25 proven at trial;

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15. For such additional relief as this Court may deem just and proper.

DATED this 13th day of September, 2019.

CHRISTENSEN JAMES & MARTIN

By: /s/ Wesley J. Smith
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